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Armitage on Locke on International Theory. The *Two Treatises of Government* and the right of intervention.

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Abstract: The paper examines David Armitage's claim that Locke makes an important contribution to international theory by exploring the place of international relations within the *Two Treatises of Government*. Armitage's suggestion is that the place of international theory in Locke's canonical works is under explored. In particular, the paper examines the implication of Locke's account of the executive power of the law of nature which allows third parties to punish breaches of the law of nature wherever they occur. The corollary is a general right of intervention under the law of nature. Such a right could create a chaotic individualistic cosmopolitanism and has led scholars such as John Rawls to claim that Locke has no international theory. In response to this problem the paper explores the way in which Locke's discussion of conquest, revolution and the right of peoples to determine the conditions of good government in chapters xvi-xix of the second *Treatise* contributes to a view of international relations that embodies a law of peoples.

Key words: Locke, Rawls, conquest, just war, intervention, law of peoples, revolution, rights.

1. Introduction: Armitage, Rawls and Cox on Locke

At the centre of David Armitage's Foundations of Modern International Thought are three chapters on John Locke.¹ Hobbes, Burke, Bentham and the American founders are also considered but no other thinker merits the attention given to Locke. Perhaps the focus on Locke is unsurprising given Armitage's future contribution to the Clarendon Edition of the Works of John Locke. The chapters contribute to Locke scholarship and engage with familiar debates about Locke and colonial acquisition that have continued over the last two decades. But the real interest of these chapters is that they illustrate and exemplify the main thesis of the book by shifting attention in the scholarship on a canonical political theorist towards the international domain, and the claim that a concern with international affairs is as important to Locke's theory as are the local political contexts of the struggle against Stuart absolutism. Indeed one might even argue that shifting perspective reveals more about the full character of Locke's argument than an attempt to reduce his concerns to the local

¹ D. Armitage, Foundations of Modern International Thought, (Cambridge, Cambridge University Press, 2013), pp. 75-134. The relevant chapters are 5-7 inclusive.

national context. Locke after all spent a significant period of his life abroad in either Government service or as a political exile, and he was acutely aware of the international context and implications of the Stuart absolutism that was challenged and overthrown by his protectors and co-conspirators.

Armitage contributes to this shift of focus in Locke scholarship in a number of ways. First he engages with the familiar debates about Locke and colonialism by probing the development of Locke's views on slavery in the Fundamental Constitution of Carolina. Secondly, Armitage nudges debates from a focus on colonial acquisition to empire, where he explores the extent to which Locke can be considered a theorist of empire. But thirdly, Armitage also returns to a discussion of the place of international theory within the main structure of Locke's canonical political texts, especially the *Two Treatises*. It is this element of Armitage's thesis that I want to contribute to in the substance of the paper.

This third aspect of Locke's contribution to international theory has been partially obscured by the focus on chapter v on property and its implications for colonial acquisition. In the first of the three Locke chapters Armitage focuses on the way in which Locke is read in respect to international relations and he discusses amongst other issues the interpretations of Locke offered by Richard Cox (in what is still the only monograph devoted to Locke's theory of

international relations) and some unpublished lectures of John Rawls.²

Armitage addresses the rejection of Cox's Strauss inspired interpretation of Locke as a Hobbesian, but then turns to the remaining attempts to derive an international theory from Locke's canonical political writings such as the *Two Treatises*. The main point is to problematize the idea of liberal legalism, namely the attempt to draw the logical implications of Locke's contract argument for international politics. The chapter endorses some of the skepticism in Rawls's lectures about finding a proper international theory in the *Two Treatises*, but continues with a challenge that '...there is clearly a need to revisit Locke's international thought in his major political work, the *Two Treatises of Government* ...'.

To provide such a detailed review on international relations within Locke's canonical writings is a major and complex task. However, in the remainder of this chapter I want to provide some contribution to that task through a consideration of the issue of a right to intervention. My point is to endorse Armitage's project but also to gently challenge the idea that international theory is only marginal to Locke's primary concerns. Read from a certain perspective, and in particular by focusing on the late chapters of the second *Treatise*, it is

² R. Cox, *Locke on War and Peace*, Oxford, Clarendon Press, 1960. The Rawls Lectures are from the Harvard collection of Rawls Papers and not the lectures that found their way into Samuel Freeman's edition of J. Rawls, *Lectures on the History of Political Philosophy*, Harvard, Belknap, 2007, pp. 105-58.

possible to argue that Locke includes considerable reflections on the problems of international politics without in any way also denying the importance of the exclusion crisis context for reading other elements of Locke's argument.

A major challenge to contemporary international relations theory and practice is the demand for humanitarian intervention, as this either conflicts with or modifies the claims of state sovereignty that underpin state-centred theories of the international realm.³ For political theorists whose concerns are primarily those of global or international justice the issue of intervention is primarily focused on humanitarian relief and redistribution, whereas those coming from a background in international relations tend to focus on military intervention and the ethics and politics of regime change.⁴ UNSC Resolution 1973 concerning military intervention in Libya is amongst the most recent examples of the tension between the demands of liberal intervention and the realist's recognition of the ubiquity of disorder and the authority of states to determine their own internal affairs. It also provides a clear illustration of the challenge to

³ For good discussions of the ethics and politics of intervention see C. Beitz, Political Theory and International Relations, Princeton, Princeton University Press, 1979, N.J. Wheeler, Saving Strangers: Humanitarian Intervention in International Society, Cambridge, Cambridge University Press, 2000, and D.K. Chatterjee ed. The Ethics of Assistance: Morality and the Distant Needy, Cambridge, Cambridge University Press, 2004 and S. Caney, Justice Beyond Border: A Global Political Theory, Oxford, Clarendon Press, 2005. The classic statement of the problem from a moral perspective in contemporary political theory is P. Singer, 'Famine, Affluence and Morality', Philosophy and Public Affairs, 1 (1973), pp. 229-43.

⁴ See for example M. Doyle, Ways of War and Peace, New York, Norton, 1997, and Striking First: Preemption and Prevention in International Conflict, Princeton, Princeton, 2008.

the logic of liberal moralism underpinning the architecture of international relations in Locke's political theory.

Armitage and Rawls reject Richard Cox's interpretation of Locke's argument as a version of Hobbesian realism and interpret the *Two Treatises* as offering an account of the international domain as a state of nature regulated by a law of nature which retains the possibility of a state of war but which crucially is not characterized as a permanent state of war.⁵ Locke departs from crude realism by denying that the state of nature between men or between political societies is 'a sedate Design upon another Mans Life' (II.§16) where we can substitute interchangeably 'Man' and 'political society'. He also departs from those theorists such as Hobbes who assert the formal identity of a state of nature and a state of war. The Lockean international domain is one of society albeit not one of political society. But like the pre-political state of nature, the state of international society is one in which the executive power of the law of nature remains with individual persons and political societies in respect to one another. The consequence of this position has been the subject of speculation by a number of recent Locke scholars including those of a robustly

⁵ Indeed it is precisely this problem of a preexisting and independent law of nature that causes Rawls to criticize Locke in the lectures from which Armitage quotes. Rawls sought to overcome the idea of an external law of nature with his Original Position argument in J. Rawls, A Theory of Justice, Oxford, Oxford University Press, 1971.

contextualist disposition,⁶ as it leaves open the problem of humanitarian and military intervention as a consequence of the residual third-party right to punish those who breach the law of nature (II. §8). This could be seen as merely a quirk of the ahistorical logic of Locke's argument being exploited out of context for some contemporary need given that Locke does not explore the issue directly. However, given that John Dunn is one of those who uses Locke's third-party right to punish as a way of framing questions about humanitarian intervention whilst being one of the strongest critics of distorting historical interpretations to fit contemporary needs⁷, it would be unsatisfactory to dismiss the discussion of a Lockean right to intervene as an anachronism or a category mistake. Dunn's discussion of a Lockean right to intervene draws on the primary duty of the law of nature of '...Preserving all of Mankind, and doing all reasonable things he can in order to that end' (II. § 11) and is focused largely on humanitarian intervention and not simply preemptive just war. And if further support is needed, it is clear that Locke endorsed the intervention of William of Orange and his invading army in the final struggle against Stuart absolutism.

⁶ Lee Ward, *John Locke and Modern Life*, Cambridge, Cambridge University Press, 2010, pp. 284-91, and John Dunn, 'The dilemma of humanitarian intervention: the executive power of the Law of Nature after God', in *The History of Political Theory and Other Essays*, Cambridge, Cambridge University Press, 1996, pp. 136-47.

⁷ See Dunn's infamous claim in the preface to *The Political Thought of John Locke*, Cambridge, Cambridge University Press, 1969, p. x. 'I simply cannot conceive of constructing an analysis of any issue in contemporary political theory around the affirmation or negation of anything which Locke says about political matters.'

2. Just War, Conquest and the Right to Punish

In light of this refocusing of Locke scholarship how should we address the question of a right to intervene? There are a number of subsidiary issues that fall under this broad question. First, is there a right to intervene? Second, is that right a right of individuals or of states or of both? Third, does Locke actually acknowledge the problem of intervention in the architecture of his argument?

In terms of the architecture of Locke's natural law theory of politics and international relations there is a clear indication of a just-war right to intervene in another state to punish breaches of the law of nature. This follows simply from the 'strange Doctrine' (II. § 13) concerning the individual's right in the state of nature to exercise the 'Executive Power of the Law of Nature' (II. § 11) that gives rise to the right of war and brings us to the question of conquest.

Locke's discussion of conquest follows traditional just war theory, but it is also informed by his theory of property and the origins of political society. His argument against conquest as a source of legitimate dominion reasserts his

claim that political societies can only be founded on the consent of the governed and that although history might seem to show that many societies appear to arise from conquest and war, this is a mistake as it confuses explanation with legitimation and justification. Locke's original contract is primarily concerned with a normative as distinct from a causal process. Conquest does not create political societies it only destroys them and we should no more mistake it for creating legitimate political societies than we should mistake the demolition of a house for its construction (II. § 175). In II. § 211, Locke argues that the only way in which political society is dissolved as opposed to government - which can be dissolved by the people's right to revolution - is through '... the Inroad of Foreign Force making a Conquest upon them', with the implication that we return to the state of nature with our individual right to execute the law of nature. Consequently, if a conquest is the result of an unjust war then it creates no more right than a thief can obtain a right in another man's property by taking it by force.

But not all conquests are the result of unjust wars and this has led scholars to speak of a right of lawful conquest⁸ in Locke's theory. This form of dominion arises as a result of the punishment of an unjust aggressive war where invasion

⁸ Ward, Locke and Modern Life, p. 287.

is the only way of preventing a 'sedate settled Design' or of punishing a direct attack. In this case it would seem that some form of despotical rule is legitimate: Locke's response to this is to acknowledge the claim to despotical rule, but to qualify it so much as to deny that the claim has the force to support political despotism.

First, Locke argues that the conqueror by conquest in a just war gains no lawful right over those who are engaged in conquest with him. This claim is prompted by risk that foreign backers of the Stuart cause might well expect landed titles in return for their support.⁹ Similarly, a just conqueror has an obligation to share the spoils of the just war with his companions who in so far as they are engaged only in the pursuit of a just war are allowed to recover the cost of the campaign and to recompense any loss that resulted in the war in the first instance.

Regarding the residual claims of those subject to a lawful conquest, Locke claims that despotical rule only extends over those who were actually engaged in the prosecution of an unjust war and not peoples as such. Civilians and non-

⁹ See S. Pincus, *1688: The First Modern Revolution*, New Haven, Yale, 2009, who argues that threat of French extra-territorial expansion was an important part of the fear for James II's regime and consequently that opposition to the Stuarts involved rejecting any rights of just conquest by foreign powers.

combatants are not only immune in battle, but are not responsible for the unjust war, unless they individually consented to it and participated in it. Only unjust aggressors and not whole peoples forfeit their rights because the people cannot transfer an unjust power to their government, as it is not a power they possess. Therefore, it is the government and its direct servants who must be held responsible for the breach of the law of nature as they have a responsibility to act within the legitimate trust placed upon government to protect civil interests and therefore to reject any illegitimate demands made of them by the people. The people are absolved because it remains the responsibility of government to decline popular demands for unjust aggression against a neighbour.

With respect to those who forfeit their rights through aggression in an unjust war, it is only their right to life and liberty that is forfeit according to the account of slavery in chap. iv: the conqueror gains no right to an aggressor's property or that of their descendents or family. Conquest does not circumvent the rights of private property or their regulation by a legitimate government. Of course aggressors can be subject to charge, so the property of an unjust aggressor can be used to pay reparations for that aggression and for the legitimate costs of punishing that aggression in war. However, even here the

conquerors' claim to just recompense cannot be so great as to force the family of an aggressor into death and destitution. In II. § 183, Locke considers the case of the relative claims of just reparation and the absolute needs of an aggressor's family and he concludes that the absolute need should prevail on the grounds of the natural law to preserve. The discussion of the rights of forfeiture and their connection to property is important for Locke as it undermines the claims of absolutists to base despotical rule on the basis of conquest as despotical rule only extends over the persons of unjust aggressors and not their property, consequently it cannot give rise to jurisdiction over territory or over a people. To reinforce this point Locke considers whether a case for territorial jurisdiction could be based on just reparation for unjust aggression and his argument is no. Even if reparations were charged to the last farthing this would at best give a few years worth of the total national product of the society, but this would never extend to the value of the whole country in perpetuity.

The case of *post bellum* just conquest in Locke's argument of chap. xvi and xix is only one aspect of a right to intervene as it applies specifically following the restraint and punishment of an unjust aggression. However, Locke's 'strange Doctrine' does not only give rise to a right to self defense and preventive

punishment and for 'restraint' as opposed to seeking 'reparation', of the sort that underpins Locke's account of just war intervention, but suggests a broader right to intervene in that the right to punish 'is in everybody' and not merely legitimate political authorities (II. § 11). This latter claim is the basis of the third-party right to intervene. Furthermore, states interpreted as the governments of political societies rather than political societies themselves, only have an exclusive authority over their subjects when they are legitimate and when this legitimacy criterion is interpreted as rule by the consent of the governed. As Simmons points out,¹⁰ Locke's rather demanding criteria of legitimacy mean that many (perhaps most) actual states during Locke's time, or our own, will not be legitimate and therefore exempt from the right of third parties to intervene and punish breaches of the law of nature.

Given that Locke's argument does allow for a right to intervention, who can exercise that right and for what reasons? The simple answer, drawing on the claim of II., §§ 8 and 11, is that the right resides ultimately with individuals as it is a right held by individuals in the natural condition prior to the creation of political societies and government by the pooling of that natural right, and it is a right that individuals retain in political society when the powers of

¹⁰ A. John Simmons, On the Edge of Anarchy: Locke, Consent and the Limits of Society, Princeton, Princeton University Press, 1993, p. 16.

government are too remote to enforce prevention, protection and punishment on behalf of the citizen.

Although political societies as states play a non-trivial role in the architecture of international politics, it remains the case that Locke bases his account of political authority on an individual power under the law of nature. Individual moral power is ultimately at the root of legitimate political power, indeed, for Locke there is no other kind of political power as anything else is illegitimate coercion and force. There is no categorical distinction between the domain of the political and the domain of the ethical nor is it the case that the transfer of this individual power to political society is an irrevocable alienation contract of the sort found in Hobbes's Leviathan.¹¹ Locke's liberalism as applied to political society and the international domain allows for the external judgement and criticism of domestic political arrangements according to the law of nature. This is precisely the Rawlsian concern, reported by Armitage, that Locke's account of political society is too naively individualistic to make sense of international politics. It is only in the case of a legitimate and well-ordered political society that there is no scope for external criticism and censure and this is because being well-ordered means being fully compliant with the law of nature and confining the exercise of political power to the protection of

¹¹ T. Hobbes, Leviathan, ed. R. Tuck, Cambridge, Cambridge University Press, 1991, chap. xvii.

peoples' civil interests.¹² Locke does not assert the ideal of political sovereignty that is developed within Hobbes's political theory and which is taken up as the basis for the domestic analogy in traditional international relations theory.

Locke's individualistic methodology does not appear to preclude any role for the state in the third-party enforcement of the law of nature; indeed in the case of William of Orange's intervention in the removal of James II we are confronted with a state intervening to support the people in re-establishing a well-ordered political society by removing an absolutist government that has put itself into a state of war with the people (at least according to Locke).¹³ As we have seen in the previous discussion of the just-war right of conquest the discussion largely turns on the rights and obligations of states and magistrates enforcing the law of nature or seeking 'restraint' and 'reparation' from non well-ordered states with a 'sedate settled Design' upon the life of its citizens and its territory. In these cases the argument for the priority of government intervention over individual intervention is a matter of feasibility. An individual

¹² J. Locke, 'A Letter Concerning Toleration' (1689) in J. Horton and S. Mendus, eds. John Locke – A Letter Concerning Toleration – In Focus, London, Routledge, 1991, p. 17.

¹³ This is a brief summary of a very complex question in Locke scholarship. The subsequent debate about the 'Glorious Revolution' of 1688 concerned whether William and Mary were merely filling a vacant throne, and therefore not technically intervening but fulfilling the line of succession and complying with Parliament's wishes. The radical view, which Locke seems to have supported, is that there was indeed a revolution by the people against an unjust aggressor (James II) and the military support of William and his troops was a third-party exercise of the executive power of the law of nature alongside that of the people. See R. Ashcraft, Revolutionary Politics and Locke's Two Treatises of Government, Princeton, Princeton University Press, 1986, pp. 467-590, and J. Marshall, John Locke, Resistance, Religion and Responsibility, Cambridge, Cambridge University Press, 1994, pp. 205-326.

going to war against an unjust state or attempting to punish a breach of the law of nature, however well-armed and well-intentioned, is unlikely to succeed in the way an organized political community can. In this respect Locke's argument seems to pre-figure the sort of institutional utilitarian approach to the state in international affairs advanced by contemporary philosophers such as Bob Goodin.¹⁴

3. The Second Treatise and the right to intervene

To see how Locke adjudicates the relative claims of political society versus the individual in international intervention we need to turn to Locke's texts, but here we run up against the problem that there is no clear discussion of the right and ethic of intervention in Locke's writings. That has not deterred all interpreters from arguing that a careful reading of passages in the second *Treatise* can give some clues about what Locke intended. Ward, for example, focuses on Locke's reference to the Greek Christians living under the domination of the Turks (II. §. 192) as an illustration of where and when one might intervene.¹⁵ Yet even his conclusions are tentative as it is quite clear from the passage that Locke is not raising the case as an international injustice crying

¹⁴ R. E. Goodin, 'What is so special about our fellow countrymen?' *Ethics*, 98 (1987-8), pp. 663-86, and Helena de Bres, 'What is so special about the state?' *Utilitas*, vol. 23, no. 2. (2011), pp. 140-60.

¹⁵ Ward, *John Locke and Modern Life*, p. 287.

out for intervention, but rather as a case for legitimate revolution by the Greek Christians against the Turks and more importantly an assertion of the claim that usurpation and historical domination do not vitiate claims to original ownership and rights to restitution and repair. Locke's concern is more appropriately seen as defending property rights from usurpation and conquest than identifying the most appropriate means of punishing breaches of those rights in the event of violation. Ward is correct in identifying this as a harm that appropriately might be rectified by an appeal to the law of nature, but it does not address the question of political prudence or judgement, namely, whether the harm demands a punishment from a particular individual or state. We can at best speculate about what Locke thought about intervention in this case, but that being said we are not wholly without resources to interpret Locke's intentions and the logic of his argument in this respect.

If one takes an unduly literalist view, Locke has next to nothing to say about international relations or international political theory except a few fragmentary claims about the state of nature between princes (see II. § 14). As Armitage helpfully suggests we might look beyond the *Two Treatises* to a host of other works where he suggests Locke develops a more complex international theory. But that should not obscure the fact that a more nuanced reading of Locke's *Two Treatises* itself reveals much about his attitude to international intervention.

This involves paying as much attention to the chapters on 'Conquest', 'Tyranny', 'Usurpation' and the 'Dissolution of Government' (chaps., xvi-xix) as is traditionally focused on chapter v on 'Property' when considering Locke's argument. These chapters particularly xvi and xix, 'Conquest' and 'Dissolution of Government', are ostensibly about the limits of legitimate political authority but they also provide clear insights into Locke's approach to intervention and the international as well as the local dimensions of the threat of Stuart absolutism.

The chapter on conquest addresses some of the issues surrounding international intervention, in particular, as we have seen, whether intervention gives a right of conquest and therefore a claim to permanent legitimate rule. That Locke rejects this right of conquest is not only related to his concern to deny the Stuarts' right to legitimate rule based on the force of French troops, but it is also a check on the similar possibility of a move by the House of Orange using Dutch troops. Of more direct interest is, however, the final and controversial chapter on the 'Dissolution of Government' where Locke considers the circumstances in which individuals have a right to revolution. The right to revolution is a right both to resist a government that acts in breach of the trust it exercises on behalf of the society, but also the right to replace and reconstitute a new government. It is important that Locke's right is not merely

a right to individual or collective self-defense or resistance. Much of the chapter is concerned with a defense of revolution from the charge of being an illegitimate rebellion against a divinely instituted government or the wholesale destruction of political society. Locke's discussion of William Barclay's defense of absolutism in §§ 233-5 is concerned with showing that individuals can replace and not merely 'respectfully' resist a tyrant. Yet alongside this main theme Locke also considers the issue of political prudence, namely when to exercise that right and who is to judge when it is appropriate to exercise that right. It is at this point that the argument becomes important for the wider issue of intervention as the same issue of political prudence applies in the case of assisting in dealing with an unjust and illegitimate government both within a political society and without, in terms of individual or political intervention.

The first point to note is that Locke's argument is for a right to revolution; a *right* to punish and a putative *right* to intervene: he does not claim that we have a *duty* to do so in either a state of nature or in political society. Individuals have a residual freedom to refrain from intervention as third parties even when they could intervene in a genuine breach of the law of nature. Simmons provides the most compelling discussion of whether Locke does or should claim a duty to intervene or punish, yet he still concludes with an equivocal stance that leaves the matter as one of judgement within what Simmons claims is Locke's

utilitarianism of rights.¹⁶ He criticizes Locke for emphasizing the perspective of the cautious individual weighing-up the risk of third-party enforcement against the claim of the innocent victim of the rights violation. Yet that calculation is both revealing and non-negligible. It is revealing because it reminds us of the structure of Locke's account of the 'executive power of the law of nature'. In the first instance this is a general right of all to defend themselves from and punish breaches of the law of nature directed against them. As we have a duty to preserve ourselves, we no more have a right to court martyrdom as a consequence of the radical pacifism of the Gospels than we have a right to kill ourselves. Alongside this Locke asserts the 'strange Doctrine' (II. § 9) of the third-party right of punishment and finally the special right of victims to punish for reparation (II. § 9). In the case of the first of these rights Locke's argument suggests that the duty to enforce the right does not really arise as self-defense is not only a right but is also a natural motive and therefore complex moral deliberation is less necessary. In the case of the second and third rights the exercise of the power of enforcement that is confirmed by the right is indeed a matter of individual judgement and is also - and Simmons underplays this - qualified by the duty to preserve ourselves and others as much as possible. Thus in a case of robbery at the point of a sword, Locke does not expect the victim to sacrifice her life carelessly in defending her property. It is perfectly

¹⁶ A. John Simmons, On the Edge of Anarchy, pp. 178-92.

legitimate to give up property, without conferring a right on the thief, and punishing that breach of property at a later time through the right of reparation. The same argument applies in the case of the right to revolution against an illegitimate ruler. In § 230, Locke answers the challenge to his theory that it will encourage those with ‘a busie head, or turbulent spirit’ to seek a change of Government every time they disagree with what it does. In such circumstances the mischief will either grow to an extent where it is recognized as a general threat triggering popular resistance, or it will not be seen as a sufficient harm to warrant the greater harm that might follow from its rectification. Two points follow from this discussion that are of relevance for extending the argument about revolution and dissolution to international intervention; the first confirms that the balance of harms has an important role in a legitimate decision about whether to punish, rebel or intervene; the second point concerns who should decide. On this second point the argument of the chapter on ‘Dissolution’ is helpfully complex when applied to judgements about whether to intervene or not. Locke makes two claims

‘...*The People shall be Judge*; for who shall be Judge whether his Trustee or Deputy acts well, and according to the Trust reposed in him, but he who deposes him, and must, by having deposed him have still a Power to discard him, when he fails in his Trust?’ (II. § 240) and

‘ For where there is no Judicature on Earth, to decide
Controversies amongst Men, *God* in Heaven is *Judge*: He alone, ‘tis true,
is Judge of the Right. But every Man is Judge for himself, as in all other
Cases, so in this...’ (II. § 241).

The first passage indicates that the right of revolution is to be exercised by the people, the second passage that the people is composed of an aggregate of individuals who all retain the exercise of their individual judgement. Locke is a reductionist individualist such that there is no societal judgement that can exist independently of the individual judgements of those who compose it. This of course leaves a number of practical questions unanswered about when the aggregate of individual judgments becomes a judgement of the people. The obvious answer, drawing on the argument of §95, is that the aggregate must be a majority of individuals in the political society. But the more important point from the point of view of intervention is that there must be a clear sign that the political society and not merely a number of disgruntled individuals (those with a ‘...busie head, or turbulent spirit’ (II. § 230)) recognize that there is a breach of the law of nature or the requirement of legitimacy.

Intervention is only permissible in cases where the society itself has indicated that the trust between governors and governed has been breached. An individual third party, whether individual person or political society, does not have the right to intervene in another political society just because they disapprove of the form of government and the policy pursued within that state. There must be a clear indication that the political society is in a state of war with its governors, and that the breach is so egregious that a state of war is the appropriate response as an act of self-defense from, and legitimate punishment of, the illegitimate ruler. This reinforces the significance of political societies in the architecture of Locke's theory, for although the objective wrong or breach of the law of nature occurs where a ruler violates the rights and civil interests of one person, this objective wrong does not entail a right to intervene unless the society in which the wrong occurs recognizes the wrongdoing as part of a 'sedate, settled Design' signifying a war between government and people. The recognition of the harm as part of a 'sedate, settled Design' is the responsibility and prerogative of the whole political society who are the judge. It is not the responsibility or right of an external third-party to make that judgement for the members of a political society. So the judgement being made by the third party, whether individual or state is not simply a matter of personal prudence about the prospect of success without the support of the majority of the aggrieved political society although that does remain important as suicidal acts of rescue

or intervention are clearly ruled out by the duty of self-preservation. Locke's argument does not preclude the right of individuals to go abroad and fight injustice where it exists, but it does preclude individuals from making suicidal attempts to punish injustice when that injustice is unrecognized by the people. So Locke's argument could accommodate the likes of George Orwell going to Spain as a private individual to fight for the republican cause in the Spanish Civil War or perhaps even a similarly inspired contemporary writer taking up arms in what appears to be a Syrian civil war, as in both cases there is a clear sign that the people (albeit not all the people in either case) recognize a 'sedate, settled Design' to war. The judgement of the third party must be whether to intervene alongside an already demonstrated will in the political society itself. The appropriate judgement is one of recognition of the political society's own judgement of the matter. At least in the case of intervention and revolution third-party judgements are subordinate to the judgements of the people within the political society that is being assisted. Political societies, therefore, have an important role in the division of labour within Locke's account of the law of nature and the architecture of international relations and this role is important to protect political liberty and some degree of self-determination. This role trumps the claims of individuals to judge a state or regime to be illegitimate or in breach of its basic trust. Locke does not deny that states can be illegitimate and yet its people can and do nevertheless accept the burden of that form of

government. The states that Locke was familiar with were absolutist, whether ruled by Catholic or Protestant princes, and as Simmons points out the state of nature that most people lived in was still a state in which there was effective albeit illegitimate government. The question is whether all breaches of the criteria of legitimacy are grounds for intervention and punishment, and here Locke's argument is no. The primary responsibility falls first and foremost on the subjects of that authority. If a large majority of the subjects of the most Catholic king of France choose to accept his rule, then albeit that they may be objectively wrong about the matter, it is their responsibility. It is not the responsibility of Englishmen to intervene to change the Government and religion of Frenchmen, nor is it the responsibility of individuals to punish breaches of the law of nature that a political society do not interpret as a 'sedate, settled Design' on a people's liberties. This last point connects with Locke's denial of toleration to Catholics in the *Letter Concerning Toleration*. The argument in that work is that Catholics cannot be trusted as loyal subjects because of their allegiance to a foreign power, namely the Pope, and the Pope's permission for them to kill Elizabeth I and her successors in order to re-establish the Catholic faith. Locke is clearly unsympathetic to Catholic doctrine and practice but the argument is political not theological. A people is responsible for its religious practice and ecclesial choices and it is not for individuals or states to correct the choices of a whole political society. Even if

Catholic doctrine were true and obligatory, it would for Locke, remain for Englishmen to reconcile themselves to it.

The case of a right to intervene is only one aspect of the problem of liberal intervention. Can we infer Locke's response to the further case where a people are at war with their government and request external support and defense?

The fact of a people claiming a right of judgement about the collapse of legitimate government in their society is a necessary condition of a right to intervene but is it a sufficient condition of a duty to intervene? This question gets to the heart of Simmons' argument about a duty to revolution against an unjust and aggressive ruler: if the duty applies within a state does it not apply beyond a state's borders?

Once again Locke's argument shows how the establishment of political societies limit the residual obligations that follow from the law of nature in the international domain. Political societies exist to protect the civil interests of their subjects and to tax property only to that end. This allows the government some discretion in international relations as defense against aggressive war can be justified as part of the protection of civil interests. However, when it comes to the obligation to provide assistance, this remains a matter of discretion rather than obligation. A sovereign exercising the 'Federative Power' (II. §§ 45

and 46) has an obligation to ensure the security of the political society by engaging in such treaties and wars as are necessary, but this power must be limited by the protective trust placed in the government. The government can no more transfer resources that belong to the members of a political society to support others outside its borders than it can tax for reasons outside the civil interests of the subjects. We return to the arguments of the earlier part of the paper concerning the origin and point of political society which is to punish breaches of the laws of nature within the society, protect the civil interests of subjects and defend them from external threats (II. § 88). Locke's argument is primarily libertarian and the challenges he recognizes in the international realm are primarily challenges to freedom and self-determination such as the case of the Greek Christians (II. §. 192). When he acknowledges the establishment of territorial boundaries by mutual agreement between particular states, he does not consider the unequal distribution of global natural resources that preoccupies some contemporary cosmopolitan political theorists¹⁷ (II. §. 45). Locke is of course writing in a world where an arbitrary distribution of natural resources such as oil has very little significance. That said, given his argument about the disproportionate contribution of labour over natural resources in creating wealth (II. §. 40) one can infer, not unreasonably, that he would reject the views of theorists such as Pogge in favour of a position close to that in

¹⁷ T. Pogge, World Poverty and Human Rights, Cambridge, Polity, 2002.

Rawls' law of peoples¹⁸, where the distribution and exploitation of all natural resources are a domestic and not an international concern. Despite Rawls's dismissal of Locke's contract approach, there is a good ground for arguing that his argument in *Two Treatises* can be read as consistent with a law of peoples that is much closer to Rawls' own contractarian account of international politics.

By a careful reading of Locke's argument about the rights of conquest (chap. xvi.) and the dissolution of government (chap. xix) we can derive a relatively clear view on the rights and duties of individuals and states with respect to intervention to prevent governments abusing the rights of their subjects and interventions to achieve global redistribution. In both cases Locke's argument strictly qualifies any general right to intervene and rejects a *duty* to intervene.

That said, Locke leaves a challenge to a conception of an international society of states and it is this that is the concern of both Dunn and Ward.¹⁹ Both commentators emphasize the argument of II. §. 6 where Locke argues that

'Every one as he is *bound to preserve himself*, and not to quit his

Station wilfully; so by the like reason when his own Preservation comes

¹⁸ J. Rawls, *The Law of Peoples*, pp. 117. Rawls's argument draws on that of David Landes' *Wealth and Poverty of Nations*, New York, Norton, 1998, who takes a peculiarly Lockean view of the matter.

¹⁹ J. Dunn, 'The dilemma of humanitarian intervention: the executive power of the Law of Nature, after God' pp. 143-4 and L. Ward, *John Locke and Modern Life*, pp. 289-91.

not into competition, ought he, as much as he can, *to preserve the rest of Mankind...*'

When this claim is read in the context of support for humanitarian relief during famines or other such catastrophes, Locke's argument becomes suspiciously like Peter Singer's utilitarian cosmopolitanism which was itself inspired by the Bangladesh famine of 1971. Singer makes a similar argument to the effect that where we can contribute to the saving of lives without sacrificing something of 'comparable moral importance' we should do so.²⁰ As Locke's moral theorizing has a utilitarian component we are still faced with the problem of whether individuals in Locke's moral universe should sit back and insist on their rights in the face of alleviating the catastrophic loss of life wrought by distant natural disasters? Most contemporary moralist political philosophers who are inspired by Locke's argument tend to take a tough minded libertarian view of the rights of individuals and their property and are sceptical of the claims of distant others to assistance.²¹ This attitude does appear to agree with Locke's, to us, rather hard-hearted view of poverty and destitution, at least as this is reflected in his 1697 An Essay on the Poor Law.²² But as Nozick points out in his own case, a libertarian theory of rights to property does not preclude a significant

²⁰ P. Singer, 'Famine, Affluence and Morality', p. 231.

²¹ R. Nozick, Anarchy, State and Utopia, Oxford, Basil Blackwell, 1974.

²² J. Locke, 'An Essay on the Poor Law', in M. Goldie ed., Locke: Political Essays, Cambridge, Cambridge University Press, 1997, pp. 182-200. A much less hard hearted view of Locke emerges in J. Tully, A Discourse on Property: John Locke and his Adversaries, Cambridge, Cambridge University Press, 1980, where Tully argues that Locke's argument is much more sympathetic to ideas of social justice than a standard libertarian reading suggests.

ideal of personal benevolence. All that Locke's argument has precluded is a strict duty to assist based on a claim right of the burdened. It remains a matter for the right holder to determine if and by how much he should contribute to humanitarian support. There is actually nothing in Locke's argument to preclude high levels of humanitarian support from government to government or from individual peoples to individual peoples along the lines that Dunn hopes for, as long as this is based on the consent of the governed. All that is precluded is that the disadvantaged can claim this of right and that, as a consequence, a government can command a contribution. In fact Locke's argument allows for just the sort of moral pressure, short of political coercion, that underpins Singer's utilitarian argument for significant giving through non-government organizations such as Oxfam. Although Locke's argument allows for a more disengaged and inward looking view in the face of demands for international intervention, it by no means precludes significant support for the destitute following a humanitarian catastrophe. The fact that the law of nature leaves much indifferent does not mean that a Lockean international order is lacking in significant international beneficence.

4. Conclusion

This paper began with Armitage's encouragement to reconsider Locke and his canonical political writings from the perspective of international theory and suggested that by changing the questions asked of the text one can see a surprisingly significant contribution to international theory at the heart of the *Two Treatises*. This paper develops that hint in Armitage's pregnant discussion of Locke. Another interesting issue that emerges from Armitage's discussion of Rawls on Locke concerns Rawls's rejection of Lockean contractarianism as a model for how A Theory of Justice might address the international realm. Rawls's later writings abandoned a straightforward extension of an original contract model for a two-stage contract, the second stage of which involved the idea of a law of peoples that became the subject of his last book.²³ Armitage suggests that it is the absence of an account of a people in Locke's theory that underlies Rawls's critique of the limitations of Locke as an international theorist, yet Armitage also suggests that the inclusion of the idea of the federative power that Locke identifies in chapter xii of the second *Treatise* complicates the simplistic view of Lockean contractarianism. If the argument above about the limitations of intervention on the basis of the claims of a people to judge their own case is correct then there is the possibility of eliciting a more subtle account of the rights and claims of a people which is not simply an additive account of individual rights and powers and which might look a lot

²³ J. Rawls, The Law of Peoples, Cambridge, Harvard, 1999.

more promising as an account of Lockean international theory as a law of peoples.